

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO. 18597 OF 2022

IN

COMMERCIAL IPR SUIT (L) NO. 18595 OF 2022

Bhanushali Studios Ltd. & Ors.

...Applicants/
Plaintiffs

Versus

Telegram Messenger LLP & Anr.

...Defendants

Ms. Megha Chandra Bagchi a/w M/s. Mahalakshmi G and Ms. Savani Vaze for the Applicants/Plaintiffs.

Mr. Kingshuk Banerjee a/w Ms. Isha Srivastava i/by Khaitan & Co. for the Defendant No. 1.

CORAM : R.I. CHAGLA J

DATE : 16 June 2022

ORDER :

1. Heard learned Counsel appearing for the Applicants/Plaintiffs and the learned Counsel for Defendant No. 1.

2. Urgent *ad-interim* relief is being sought for removal and/or deletion of infringing links enumerated at Exh.C with immediate

effect and for provision of police assistance to the Applicants in such removal and deletion of the infringing links which the Applicants' claim infringe the Applicants' copyright in the subject film titled "Janhit Mein Jaari".

3. It is stated by the Applicants/Plaintiffs that the Applicant/Plaintiff Nos. 1 to 3 are producers of the cinematography film titled "Janhit Mein Jaari". It is the Plaintiffs' case that the subject film had been released worldwide and in India on 10th June 2022. In India it has released on approx. 600 screens. Censor certificate has been issued in the name of the Applicant/Plaintiff No. 1. The Plaintiff has filed the present Suit against Defendant No. 1 firm having App of "Telegram" on which there were links available on chat groups through which the subject film was available for download. The Plaintiffs' legal team on 11th June 2022, contacted certain persons who appraised the Plaintiffs. The Plaintiffs made a complaint before the BKC Police Station on 11th June 2022 and after which it was noticed that the link circulated on Defendant No. 1's App had become inactive.

4. The Suit has also been filed as John Doe Suit against the

Defendant No. 2. This is in view of the Plaintiffs learning on 12th June 2022 of several infringing links being found on the internet. These infringing links have been enumerated in Exh.C to the Plaint. These infringing links appear to be currently active and make available a pirated copy of the subject film available for download.

5. Learned Counsel appearing for the Applicants/Plaintiffs has tendered screenshots from the website moovana net, which is one of the infringing websites in which it appears that the subject film is available for viewing through online stream. When the user has access and watches the subject film for 40 minutes, there is a box which appears wherein it is mentioned that 'to continue enjoying your favorite movie, please sign in' and there are two boxes namely, 'Login' and 'Free sign up'. This is displayed in one of the screenshots. The screenshots are taken on record and marked "X" for identification.

6. It is the case of the Applicants/Plaintiffs that they are suffering revenue loss in the theaters due to such piracy of the subject film being displayed on the infringing links listed in Exh.C to the Plaint. Further claim is made by the Applicants/Plaintiffs that

there is a revenue loss for the reasons that OTT platform and/or any further distributions would not want to execute deals with the Plaintiffs since they would not find subscribers for the film, since the film is freely available online.

7. In my *prima facie* view, a case has been made out by the Applicants/Plaintiffs that the Defendant No. 2 which is an unknown entity and who have been proceeded against in John Doe action is by virtue of the infringing links on the internet enumerated at Exh.C to the Plaintiff directly infringing the copyright held by the producers/Plaintiffs in the film as these unknown Defendants appear to have no licence and/or authority to make available a copy of the film to the public.

8. This Court has in “John Doe” actions in copyright infringements passed orders from time to time and two such orders, one passed in *Shemaroo Entertainment Ltd. Vs. Gujarath Telelink Pvt. Ltd. & Ors.*¹, on 1st July 2016 by the Single Judge of this Court and the other passed in *Red Chillies Entertainment Pvt. Ltd. Vs. M/s.*

1 *Notice of Motion 854/15 in Suit (L) 271/15 order dated 1.07.2016*

*Hathway Sonali Om Crystal Cable Pvt. Ltd. Anr.*² on 17th December 2015 have been relied upon by the learned Counsel for the Applicants/Plaintiffs. These orders are also passed with respect of the films which were the subject matter in those cases.

9. In the case decided by the Single Judge of this Court on 17th December 2015 in *Red Chillies Entertainment Pvt. Ltd.* (supra), this Court had considered that the feature film “Dilwale”, which had issued a Censor Certificate on 11th December 2015 was being released for public exhibition on 18th December 2015. Prior to its release there were internet links and various URLs which were listed and expressly mentioned in the Complaint and though presently dormant, would become active once the film is released and provide access to the Suit film, which would have resulted in large scale downloads of the Suit film which would affect their revenue seriously apart from resulting in infringing the copyright of the Suit film. This Court had accordingly, granted *ad-interim* relief restraining the Defendants from putting on Cable TV network/disseminating/reproducing exhibiting on internet or otherwise making available to the public the suit film as well as further injunction restraining the Defendants from making

² *Notice of Motion (L) 3549/15 in Suit (L) 1326/15 order dated 17.12.2015*

copies of the suit film and/or giving on hire, or offer for sale or hire any copy of the suit film and to communicate the suit film to the public in any manner whatsoever. Further, the Defendants had been restrained from distributing or duplicating or communicating or displaying or downloading exhibiting or playing the suit film in any manner without proper licence from the Plaintiff. The access to the URIs were accordingly, to be blocked by the Defendants within 24 hours of receiving the notice by the Plaintiffs giving details of such infringing websites/web-pages to the Internet Service Providers.

10. In my view, the decision in *Red Chillies Entertainment Pvt. Ltd.* (supra) is apposite. In fact, this case is on a higher footing, considering that the subject film was already released on 10th June 2022 and thereafter, the infringing links of the internet which are set out in Exh.C to the Plaintiffs have surfaced. Thus, it appears that directly a revenue loss has been incurred to the Plaintiff apart from the infringing links *prima facie* infringing the copyright held by the producers/Plaintiffs in the subject film.

11. Learned Counsel appearing for the Defendant No.1 states on instructions that the Defendant No. 1 has blocked the

relevant channels mentioned in paragraph 11 of the Interim Application on the 1st Defendant's App and thus, there is presently no infringing links/copies of the subject film appearing on the App of the 1st Defendant. He has further stated on instructions that in the event, the Plaintiffs inform the Defendants of infringing links appearing on the App of the 1st Defendant, he shall immediately take necessary action in blocking access to the infringing links. The statement is accepted.

12. Insofar as the John Doe action against Defendant No. 2 is concerned, I am of the *prima facie* view that the infringing links set out in Exh.C to the Plaintiffs infringes the copyright of the Plaintiffs in the subject film and therefore, *ad-interim* relief is necessary to be passed in terms of prayer clauses (b) and (c) of the Interim Application against the Defendant No. 2 who is the unknown person against whom the Plaintiffs has filed the John Doe action. Hence the following order :-

- (i) There shall be *ad-interim* relief in terms of prayer clauses (b) and (c), which read thus:-

- “(b) Pass an order and mandatory injunction of this Hon’ble Court directing the Defendants by themselves, their servants, agents, licensees, franchisees, partners, proprietors and/or otherwise howsoever to remove and/or delete the infringing links enumerated at Exhibit “C” with immediate effect;*
- (c) Pass an order directing the concerned police stations to render necessary assistance to the Applicants in restraining the Defendants from violating /infringing the Applicants’ copyright in the suit film titled “Janhit Mein Jaari.”*
- (ii) *Ad-interim* order shall continue till further orders.
- (iii) The Applicants/Plaintiffs are granted liberty to apply in the event, they learn of infringing links other than infringing links set out in Exh.C to the Plaint.
- (iv) In view of the above statement made by the learned Counsel for the Defendant No. 1, the Plaintiffs shall take steps to remove the Defendant No. 1 as a party to the present Suit.

- (v) Amendment shall be carried out by the Applicants/Plaintiffs to remove the Defendant No. 1 as party within a period of one week from the date of this order.

- (vi) Re-verification is dispensed with.

- (vii) Place the Interim Application for compliance on 29th June 2022.

- (viii) Parties shall act on an authenticated copy of this order.

[R.I. CHAGLA J.]